

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 20199 of 2004

Between:

**P. Venkata Swamy S/o P. Rajaiah
R/o Hastinapur Ranga Reddy District**

..... PETITIONER

AND

- 1 State of A.P., rep by Secretary, Legislative Affairs and Law Department,
Secretariat, Hyderabad**
- 2 the Girijan Coop. Corporation Ltd., Visakhapatnam, Through its Vice
Chairman and Managing director**
- 3 The Regional Manager, Girijan Coop Corporation Ltd., Hyderabad Branch
at Masab Tank,
Hyderabad**

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus, or any other appropriate Writ, order or direction, declaring the action of the respondents 2 and 3 in not appointing and regularizing the services of the petitioner as being illegal, arbitrary and contrary to GO Ms. No. 212 dt 22-4-1994 and consequently direct the respondents to appoint the petitioner and regularize his services with all attendant benefits.

Counsel for the Petitioner:MR.K.RAGHUVeer REDDY

Counsel for the Respondent No.1: GP FOR LAW & LEGISLATIVE AFFAIRS

Counsel for respondents 2 & 3: Mr. N. Sridhar Reddy

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 20199 of 2004

ORDER:

The present writ petition is filed for issuance of writ of Mandamus or any other appropriate writ, order or direction declaring the action of the respondents 2 and 3 in not appointing and regularizing the services of the petitioner as illegal, arbitrary and contrary to G.O.Ms.No.212 dated 22.4.1994.

It is a fact that the writ petitioner filed a writ petition – W.P.No.27078 of 1995 – which was disposed of on 27.7.1998, wherein this court directed the respondents to regularize the services of the petitioner in terms of G.O.Ms.No.212 read with the judgment reported in Y. Ramana Babu v. University of Health Services (1997 SLR 803) and pass appropriate orders within two months from the date of receipt of a copy of that order. the prayer in the said writ petition reads as follows:

“to issue a writ of Mandamus or any other appropriate writ or writs order or direction declaring the action of the respondents 2 and 3 in not regularizing the services of the petitioner and in discontinuing services as illegal, arbitrary and contrary to G.O.Ms.No.212 dated 22.4.1994 and consequently direct the respondents to continue the petitioner in service and regularize his services with all benefits”.

The prayer in this writ petition is akin to the prayer in W.P. 27078 of 1995. In the earlier writ petition, a direction was also given to the respondents to regularize the services of the petitioner in terms of G.O.Ms.No.212. For the same relief the present petition is filed. It is

not in dispute that the principles of *res judicata* will equally apply to the writ proceedings. A *lis* has been decided by this court directing the respondents to regularize the services of the petitioner if the directions of this court have not been complied with, the remedy is otherwise, but not filing any writ petition for the same relief. Therefore, the writ petition deserves to be dismissed on the ground of principles of *res judicata*.

The decision relied on by the learned counsel for the petitioner in *S. Purushotham v. District Collector, Karimnagar* in no manner applies to the facts of the case with regard to the principles of *res judicata*. Learned counsel for the petitioner further relied on a decision of the apex court in *Daryao v. State of U.P.* wherein their Lordships held:

“9. But, is the rule of *res judicata* merely a technical rule or is it based on high public policy? If the rule of *res judicata* itself embodies a principle of public policy which in turn is an essential part of the rule of law then the objection that the rule cannot be invoked where fundamental rights are in question may lose much of its validity. Now, the rule of *res judicata* as indicated in S. 11 of the Code of Civil Procedure has no doubt some technical aspects, for instance the rule of constructive *res judicata* may be said to be technical; but the basis on which the said rule rests is founded on considerations of public policy. It is in the interest of the public at large that a finality should attach to the binding decisions pronounced by Courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. If these two principles form the foundation of the general rule of *res judicata* they cannot be treated as irrelevant or inadmissible even in dealing with fundamental rights in petitions filed under Art.32”.

Their Lordships also held that the binding character of judgments pronounced by courts of competent jurisdiction is itself an essential part of the rule of law obviously is the basis of the administration of justice on which the Constitution lies so much emphasis. Their Lordships further held “in our opinion, therefore, the plea that the general rule of *res judicata* should not be allowed to be invoked cannot be sustained”. Ultimately it was held “we hold that if a writ petition filed by a party under Article 226 is considered on the

merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal or other appropriate proceedings permissible under the Constitution”.

In this case also after hearing both sides the order has been passed by this court. So, for the same relief the petitioner cannot again file another writ petition. Therefore, even the above decision does not in any manner support the case of the petitioner and on the other hand it squarely applies to the facts of the case.

In view of the above, the writ petition is liable to be dismissed and it is accordingly dismissed.

K.C. Bhanu, J.

Date: 06--12—2004.

MVB.

..... REGISTRAR

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SECTION OFFICER

To

- 1 The Secretary to Government, Legislative Affairs and Law Department,
Secretariat, Hyderabad
 - 2 The Girijan Coop. Corporation Ltd., Visakhapatnam, Through its Vice Chairman and Managing director
 - 3 The Regional Manager, Girijan Coop Corporation Ltd., Hyderabad Branch at Masab Tank, Hyderabad
- 4.2CCs to Government Pleader for Law & Legislative Affairs, High

Court Buildings, Hyderabad (OUT).

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